



**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Federal Highway Administration**

**[Docket No. FHWA-2020-0009]**

**Renewal Package from the State of Ohio to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State**

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Notice; request for comments.

**SUMMARY:** This notice announces that FHWA has received and reviewed a renewal package from the Ohio Department of Transportation (ODOT) requesting participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA has determined the renewal package to be complete, and developed a draft renewal MOU with ODOT outlining how the State will implement the Program with FHWA oversight. The public is invited to comment on ODOT's request, including its renewal package and the proposed renewed MOU, which includes the proposed assignments and assumptions of environmental review, consultation, and other activities.

**DATES:** Please submit comments by [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Facsimile (Fax): 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE, West Building Ground Floor Room W12-140, Washington, DC 20590.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

For FHWA: Noel Mehlo by email at [noel.mehlo@dot.gov](mailto:noel.mehlo@dot.gov) or by telephone at 614-280-6841. The FHWA Ohio Division Office's normal business hours are 8 a.m. to 4:30 p.m. (Eastern Time), Monday-Friday, except for Federal holidays. For the State of Ohio: Tim Hill by email at [tim.hill@dot.ohio.gov](mailto:tim.hill@dot.ohio.gov) or by telephone at 614-644-0377.

State business hours are the same as above although State holidays may not completely coincide with Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **Electronic Access**

You may submit or retrieve comments online through the Federal eRulemaking portal at: <http://www.regulations.gov>. The Web site is available 24 hours each day, 365 days each year. Please follow the instructions. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: <http://www.archives.gov> and the U.S. Government Publishing Office's Web page at: <http://www.access.gpo.gov/nara>.

### **Background**

Section 327 of title 23, United States Code (23 U.S.C. 327), allows the Secretary of DOT to assign, and a State to assume, the responsibilities under NEPA (42 U.S.C. 4321 et seq.) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The ODOT entered the Program on December 28, 2015, after submitting its application to FHWA, obtaining FHWA's approval, and entering into a MOU in accordance with 23 U.S.C. 327 and FHWA's application regulations for the pilot program (23 CFR part 773). The MOU was amended on June 6, 2018. On December 6,

2019, after coordination with FHWA, ODOT submitted the renewal package in accordance with the renewal regulations in 23 CFR 773.115.

Under the proposed renewal MOU, FHWA would assign to the State, through ODOT, the responsibility for making decisions on the following types of highway projects:

1. All Class I, or environmental impact statement projects, both on the State Highway System (SHS) and local government projects off the SHS that are funded by FHWA or require FHWA approvals.

2. All Class II, or categorically excluded projects, both on the SHS and local government projects off the SHS that are funded by FHWA or require FHWA approvals.

3. All Class III, or environmental assessment projects, both on the SHS and local government projects off the SHS that are funded by FHWA or require FHWA approvals.

4. Projects funded by other Federal agencies (or projects without any Federal funding) of any Class that also include funding by FHWA or require FHWA approvals. For these projects, ODOT would not assume the NEPA responsibilities of other Federal agencies.

Excluded from assignment are highway projects authorized under 23 U.S.C. 202 and 203, highway projects under 23 U.S.C. 204 unless the project will be designed and constructed by ODOT, projects that cross State boundaries, projects that cross or are adjacent to international boundaries, projects under the Recreational Trails Program (23 U.S.C. 206), and programs and projects advanced by direct recipients of Federal-aid highway program funds other than ODOT.

The assignment also would give ODOT the responsibility to conduct the following environmental review, consultation, and other related activities:

*Air Quality*

- Clean Air Act (CAA), 42 U.S.C. 7401-7671q, with the exception of any conformity determinations

*Noise*

- Noise Control Act of 1972, 42 U.S.C. 4901-4918
- Compliance with the noise regulations in 23 CFR part 772

*Wildlife*

- Endangered Species Act of 1973, 16 U.S.C. 1531-1544
- Fish and Wildlife Coordination Act, 16 U.S.C. 661- 667d
- Anadromous Fish Conservation Act, 16 U.S.C. 757a -757f
- Migratory Bird Treaty Act, 16 U.S.C. 703 -712

*Hazardous Materials Management*

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k

*Historic and Cultural Resources*

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 300101, et seq.

- Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa-mm
- Title 54, Chapter 3125—Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001-3013; 18 U.S.C. 1170

*Social and Economic Impacts*

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201- 4209

*Water Resources and Wetlands*

- Clean Water Act, 33 U.S.C. 1251-1387 (Section 401, 402, 404, 408, and Section 319)
- Coastal Barrier Resources Act, 16 U.S.C. 3501-3510
- Coastal Zone Management Act, 16 U.S.C. 1451-1466
- Safe Drinking Water Act, 42 U.S.C. 300f- 300j-26
- General Bridge Act of 1946, 33 U.S.C. 525-533
- Rivers and Harbors Act of 1899, 33 U.S.C. 401-406
- Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Wetlands Mitigation, 23 U.S.C. 119(g), 133(b)(14)
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777

- Flood Disaster Protection Act, 42 U.S.C. 4001- 4130

#### *Parklands*

- 23 U.S.C. 138 and 49 U.S.C. 303 (Section 4(f)) and implementing regulations at 23 CFR part 774
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302 – 200310

#### *FHWA-Specific*

- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135.
- Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

#### *Executive Orders (E.O.) Relating to Highway Projects*

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115)
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species

- E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (aka “One Federal Decision”).

The proposed renewal MOU would allow ODOT to continue to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the listed laws and executive orders. The ODOT also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

A copy of the proposed renewal MOU and renewal package may be viewed on the docket at [www.regulations.gov](http://www.regulations.gov), as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on ODOT's Web site at: <https://transportation.ohio.gov/wps/portal/gov/odot/programs/nepa-assignment>. The FHWA will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.



---

**Nicole R. Nason,**  
*Administrator,*  
*Federal Highway Administration.*

[FR Doc. 2020-13579 Filed: 6/23/2020 8:45 am; Publication Date: 6/24/2020]